

BEFORE THE DOCKET FILE COPY ORIGINAL
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)

)
Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations.)
(Laramie, Wyoming, Cheyenne, Wyoming)
and Ault, Colorado))

MM Docket No. _____
RM- _____

RECEIVED

OCT 29 2004

TO: Secretary, Federal Communications Commission
ATTN: Allocations Branch

Federal Communications Commission
Office of Secretary

PETITION FOR RECONSIDERATION

Laramie Mountain Broadcasting, L.L.C. ("LMB"), licensee of broadcast station KRQU(FM), Laramie, Wyoming, pursuant to Rule 1.429, files this Petition for Reconsideration of the Commission's September 29, 2004 letter ruling dismissing LMB's Petition for Rulemaking filed on February 11, 2004. LMB's Petition was dismissed due to short spacing to KARS-FM in Laramie, Wyoming. Due to a change in circumstances, that short spacing is no longer an issue and LMB's Petition for Rulemaking should, therefore, be reinstated.

In its Petition for Rulemaking LMB requests that KRQU's Channel 283C2 in Laramie, Wyoming be upgraded to channel 280C1 and that Channel 280C1 be reallocated to Ault, Colorado. In order to accommodate this request, LMB requested that Channel 277C2 be substituted for vacant Channel 280C2 in Cheyenne, Wyoming. LMB also requested that new Channel 283C2 be allotted to Laramie, Wyoming from a site that would be fully spaced for the use of Channel 280C1 in Ault, Colorado.

By letter dated September 29, 2004 the Commission returned the Petition for Rulemaking "because the proposed transmitter site for Channel 277C2 at Cheyenne is short spaced by 38.8

kilometers to the licensed facilities of station KARS-FM, Channel 275C in Laramie, Wyoming.” The Commission acknowledged that KARS-FM had been issued a construction permit to change its transmitter site and downgrade to Channel 275C1 at a location that would be fully spaced with the proposed use of Channel 275C in Laramie, Wyoming. The Commission noted, however, that no license had been issued yet to cover the construction permit for the new facilities and that, therefore, the licensed short spaced facilities must be protected. The short spaced formerly licensed facility on Channel 275C in Laramie, Wyoming is no longer a concern. KARS-FM filed a license application for its new facilities on Channel 275C, on October 5, 2004.¹ KARS-FM is broadcasting from its new site as authorized. Although the license application is not yet granted, grant of the license is imminent and warrants processing LMB's rulemaking since LMB's proposal to allocate Channel 277C2 to Cheyenne is no longer short spaced.²

LMB has learned that a subsequently filed Petition for Rulemaking was filed by Mitchell Beranek requesting the use of Channel 277A in Wheatland, Wyoming. This Petition for Rulemaking is mutually exclusive with the proposal to utilize Channel 277C2 in Cheyenne, Wyoming. There are other alternate channels available for use in Wheatland and Mr. Beranek has agree to amend his

¹ Rule 1.429(b) allows for consideration of new facts only under limited circumstances. "...Section 1.429(b) of the Rules provides that petitions for reconsideration relying upon facts not previously submitted will be granted only under three limited circumstances. First, the facts relate to events which have occurred or circumstances which have changed since the last opportunity to present these facts to the Commission. Second, the facts were unknown to the petitioner and could not have been timely ascertained through the exercise of ordinary diligence. Third, the Commission determines that consideration of these facts is required by the public interest." *Farmington, Grass Valley, et al*, 14 FCC Rcd 18971 at ¶9 (1999). Submission of the KARS-FM license application is a new fact which occurred after the Commission's letter dismissal of the Petition for Rulemaking. This is a material changed fact which could not have been brought up earlier and, further, is in the public interest to consider at this point.

² See, attached Engineering Statement. There are also other equitable arguments in favor of processing LMB's Rulemaking. KARS-FM agreed in another Rulemaking to downgrade and is also contractually obligated to do so. See, *Gunnison, Crawford, et al*, DA-04-2908 at n. 11 (released September 20, 2004), and Engineering Statement.

Petition for Rulemaking to specify use of alternate full spaced Channel 298A in lieu of Channel 277A. *See*, attached Consent.

The public interest would clearly be served by the proposed Amendment to the Table of Allotments proposed by LMB.³ In sum, the proposal would result in a first transmission service to Ault, Colorado and will vastly improve the service currently provided by KRQU. The reallocation of Channel 280C1 to Ault, Colorado will result in 1 mV signal coverage to approximately 16,656 square kilometers and 604,178 people, which compares to the current coverage of KRQU of approximately 7,831 square kilometers and 33,619 people. This results in a net gain in service to 570,559 people and an additional 8,825 square miles. In addition, the proposal will result in allocation to Laramie, Wyoming of a new Channel 283 with a site restriction of 12 kilometers NW of Laramie, Wyoming.

The following is a summary of the proposed changes to the FM table of allotments, 73.202(b)(1):

COMMUNITY	PRESENT	PROPOSED
Cheyenne, WY	229A, 250C1, 260C2, 264C1, 280C2, 285C2, 292A	229A, 250C1, 260C2, 264C1, 277C2, ⁴ 285C2, 292A
Laramie, WY	236C, 244C2, 254A, 275C, 283C2	236C, 244C2, 254A, 275C1, 283C2 ⁵
Ault, CO	-----	280C1 ⁶

³ LMB incorporates its Petition for Rulemaking and attached engineering.

⁴ Allotment point 41° 22' 59"N, 104° 40' 06" W, site restriction 30.4 km northeast of Cheyenne, Wyoming.

⁵ Proposed allotment point 41° 23' 00" N, 105° 41' 48"W -- site restriction 12 km northwest of Laramie, Wyoming.

⁶ Allotment point 40° 45' 00" N, 105° 09' 12" W, site restriction 40.3 km northwest of Ault, Colorado.

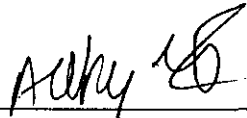
LMB incorporates its Petition for Rulemaking and hereby expresses its intention to file an application to operate on Channel 280C1 in Ault, Colorado and, if granted, to build the facility expeditiously. LMB will also participate in an auction and file an application for Channel 283C2 in Laramie, Wyoming as reallocated and, if its application is granted, will build the station promptly.

Respectfully submitted,

LARAMIE MOUNTAIN BROADCASTING, LLC.

GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102-3807
(703) 761-5000

By: _____


A. Wray Fitch III

October 28, 2004

**CONSENT OF MICHELL BERANEK FOR USE OF ALTERNATE CHANNEL
IN PETITION FOR RULEMAKING FOR A NEW CHANNEL AT WHEATLAND,
WYOMING**

I, Mitchell Beranek, hereby consent to the substitution of channel 298A in lieu of channel 277A as proposed in my Petition for Rulemaking for a new FM allotment at Wheatland, Wyoming.


It has come to my attention that Laramie Mountain Broadcasting ("LMB") is seeking to substitute channel 277C2 at Cheyenne for the currently vacant allotment of channel 280C2 at Cheyenne, Wyoming.

I have no objections to these substitutions as it will not effect my original proposal for a new class A allotment for Wheatland, Wyoming.

I will file an amendment to my original Petition for Rulemaking specifying the use of channel 298A in place of channel 277A at Wheatland, Wyoming.

I also certify that I have not been compensated or promised any future consideration in any way for agreeing to this consent.

Respectfully Submitted,



Mitchell Beranek,
7607 Schrader Lane
Cheyenne, WY 82009
307-635-0125

DATED: October 29, 2004

ENGINEERING STATEMENT

This engineering statement is to support the Petition for Reconsideration file by Laramie Mountain Broadcasting, LLC ("LMB") in regards to its Petition for Rulemaking to modify the operation of KRQU Laramie, Wyoming to 1) change its city of license from Laramie, Wyoming to Ault, Wyoming. 2) One step change channels from 283C2 to channel 280C1. 3) Re-allot channel 283C2 to Laramie, Wyoming. 4) Substitute channel 277C2 for the vacant allotment of channel 280C2 at Cheyenne, Wyoming.

LMB has confirmed that all of the original engineering provided in its original Petition for Rulemaking is still valid with the following exceptions:

- 1) a Petition for Rulemaking filed by Mitchell Beranek for the use of Channel 277A at Wheatland, Wyoming. This potentially conflicts with the use of Channel 277C2 at Cheyenne, Wyoming.
- 2) Reserved allotment points for channel 280C2 at Cheyenne, Wyoming filed by three separate parties in the upcoming FM broadcast auction # 37.

In regards to the Petition for Rulemaking filed by Mitchell Beranek, LMB has contacted Mr. Beranek and he has given LMB his consent to the substitution of Channel 298A in his Petition in place of channel 277A for use at Wheatland, Wyoming (See attached consent letter). The Petition for Rulemaking filed by Mr. Beranek has not yet been acted upon by the Commission. Also, the proposed substitution of channel 298A for channel 277A at Wheatland fits at the same coordinates as proposed in Mr. Beraneks original proposal.

In regards to the reserved allotment points for channel 280C2 at Cheyenne, Wyoming. The original Petition for Rulemaking filed by LMB was filed before these reserved allotment points were filed for. Therefore, they should not be protected should the commission decide to accept this Petition for Reconsideration.

In the letter received by LMB from the Commission dated September 29, 2004 returning LMB's Petition for Rulemaking. The Commission's reason for returning LMB's petition is based upon the apparent short spacing towards KARS-FM Laramie, Wyoming on channel 275C. LMB had demonstrated in its original petition that AGM-Nevada, LLC ("AGM"), licensee of KARS-FM, Laramie, WY, had received a Construction Permit (BMPH-20020926ABK) to one-step downgrade KARS-FM. This downgrade was part of a consent to downgrade KARS-FM filed by AGM in regards to MB Docket No. 03-144, RM-10733, RM-10788, RM-10789. This consent to downgrade was agreed to in that rulemaking prior to the filing of LMB's Rulemaking for KRQU Laramie. Thus, consent to downgrade KARS-FM was already on file with the Commission prior to the filing of LMB's Petition for Rulemaking. Thus, the Petition for Rulemaking filed by LMB was not contingent upon a licensed being issued for the operation of the new proposed downgraded operation of KARS-FM.

It was also noted in the original petition that KARS-FM was listed as silent and off the air from its licensed Class C facilities. KARS-FM had also cancelled its tower lease which it had with the Petitioner, LMB, for its licensed Class C facilities. LMB was the previous licensee of KARS-FM Laramie (formerly KRQU), and sold KARS-FM to AGM. As part of the agreement for sale, AGM agreed to purchase the station with the understanding LMB had Petitioned the Commission to change the city of license from

Laramie, Wyoming to Laporte, Colorado on Channel 275C2 (this proposal would have also complied with the planned use by LMB of channel 277C2 at Cheyenne, WY). If this Petition was denied or withdrawn, then AGM would agree to a new class C1 operation of KARS-FM at a site specified by LMB. AGM ultimately withdrew the Petition for Rulemaking to change the city of license for KARS-FM from Laramie, WY to Laporte, CO and then filed a one-step downgrade application to a class C1 for KARS-FM. LMB assumes that this was done not only to abide by the terms of its sale contract with LMB (on file at the commission as part of the license assignment application) but also as part of the consent to downgrade KARS-FM in MB Docket No. 03-144.

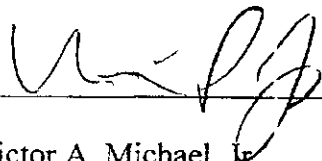
It should also be noted that AGM has begun program tests from its new class C1 facilities listed in BMPH-20020926ABK and filed a license application, BLH-20041004ACT.

It is apparent, that AGM not only consented to downgrade KARS-FM, but also was contractually obligated in its sales agreement when AGM purchased KARS-FM from LMB. Both of these actions by AGM were agreed too prior to the date of filing of Petition for Rulemaking filed by LMB for KRQU-FM Laramie. Thus, LMB feels that the operation of KARS-FM on Channel 275C is not, and was not, contingent upon the Petition for Rulemaking filed by LMB.

Attached to this engineering statement is Figure 1 which shows that channel 277C2 can still be allotted to Cheyenne, Wyoming. Figure 2 shows that channel 280C1 can still be allotted to Ault, Colorado, and Figure 3, which shows that channel 298A can be allotted to Wheatland, Wyoming to substitute the proposed allotment of channel 277A filed by Mitchell Beranek.

LMB respectfully asks the Commission to reconsider its decision to return LMB's original Petition for Rulemaking filed by LMB licensee of KRQU Laramie, Wyoming and institute a Proposed Rulemaking in regards to its original petition.

Respectfully submitted,



Victor A. Michael, Jr.
Sole Member
Technical Consultant
Laramie Mountain Broadcasting, LLC
6807 Foxglove Drive
Cheyenne, WY 82009
307-778-9318
vicmichael@aol.com

Figure 1. Channel spacing study, Channel 277C2
Cheyenne, Wyoming

REFERENCE
41 22 59 N
104 40 06 W

CLASS = C2
Current Spacings

DISPLAY DATES
DATA 10-28-04
SEARCH 10-29-04

----- Channel 277 - 103.3 MHz -----

Call	Channel	Location	Dist	Azi	FCC	Margin
RADD	ADD 277C2	Cheyenne	WY 0.00	0.0	190.0	-190.00
RADD	ADD 277A	Wheatland	WY 80.22	343.3	166.0	-85.78
RADD	ADD 280C1	Cheyenne	WY 15.78	71.5	79.0	-63.22
KARSFM	LIC 275C	Laramie	WY 66.18	263.3	105.0	-38.82
AL280	VAC 280C2	Cheyenne	WY 29.55	203.0	58.0	-28.45
RDEL	DEL 280C2	Cheyenne	WY 29.55	203.0	58.0	-28.45
AP280	APP 280C2	Cheyenne	WY 41.30	193.5	58.0	-16.70
AP280	APP 280C2	Cheyenne	WY 47.19	201.9	58.0	-10.81
AP280	APP 280C2	Cheyenne	WY 55.80	187.6	58.0	-2.20
ALLO	VAC 277A	Hanna	WY 167.12	289.5	166.0	1.12
KRFX.A	APP-D 278C	Denver	CO 189.42	194.8	188.0	1.42
KRFX.A	APP-D 278C	Denver	CO 189.42	194.8	188.0	1.42
KRFX.A	APP-D 278C	Denver	CO 189.42	194.8	188.0	1.42
RDEL	DEL 278C	Denver	CO 189.67	194.8	188.0	1.67
KRFX	LIC 278C	Denver	CO 189.67	194.8	188.0	1.67
RADD	ADD 280C1	Ault	CO 81.26	210.2	79.0	2.26
RADD	ADD 278C0	Denver	CO 189.67	194.8	176.0	13.67
RADD	ADD 275C1	Laramie	WY 102.57	238.6	79.0	23.57
KARSFM	CP 275C1	Laramie	WY 102.95	237.1	79.0	23.95
AL276	RSV 276C	Parker	CO 222.83	165.9	188.0	34.83
KAVD.C	CP 276C	Parker	CO 223.46	165.0	188.0	35.46
KOZYFM	LIC 280C3	Gering	NE 96.38	55.9	56.0	40.38
KAVD	LIC-N 276C1	Limon	CO 229.74	157.4	158.0	71.74

Figure 2. Channel spacing study, Channel 280C1
Ault, Colorado

REFERENCE
40 45 00. N
105 09 12 W

CLASS = C1
Current Spacings

DISPLAY DATES
DATA 10-28-04
SEARCH 10-29-04

----- Channel 280 - 103.9 MHz -----

Call	Channel	Location	Dist	Azi	FCC	Margin
RADD	ADD	280C1 Ault	CO 0.00	0.0	245.0	-245.00
AP280	APP	280C2 Cheyenne	WY 35.23	41.0	224.0	-188.77
AP280	APP	280C2 Cheyenne	WY 36.67	65.7	224.0	-187.33
AP280	APP	280C2 Cheyenne	WY 43.38	45.8	224.0	-180.62
RDEL	DEL	280C2 Cheyenne	WY 52.07	33.9	224.0	-171.93
AL280	VAC	280C2 Cheyenne	WY 52.07	33.9	224.0	-171.93
RADD	ADD	280C1 Cheyenne	WY 93.70	36.2	245.0	-151.30
KOZYFM	LIC	280C3 Gering	NE 173.21	43.8	211.0	-37.79
KRQU	LIC	283C2 Laramie	WY 67.19	338.1	79.0	-11.81
KRQU.C	CP -N	283C2 Laramie	WY 72.79	341.7	79.0	-6.21
KYZX	LIC-N	280C2 Pueblo West	CO 224.07	173.5	224.0	0.07
RADD	ADD	277C2 Cheyenne	WY 81.26	29.9	79.0	2.26
RDEL	DEL	283C2 Laramie	WY 82.42	344.0	79.0	3.42
RADD	ADD	283C2 Laramie	WY 83.85	327.3	79.0	4.85
KRFX.A	APP-D	278C Denver	CO 113.13	183.6	105.0	8.13
KRFX.A	APP-D	278C Denver	CO 113.13	183.6	105.0	8.13
KRFX.A	APP-D	278C Denver	CO 113.13	183.6	105.0	8.13
KRFX	LIC	278C Denver	CO 113.41	183.5	105.0	8.41
RDEL	DEL	278C Denver	CO 113.41	183.5	105.0	8.41
RADD	ADD	279C0 Akron	CO 205.02	108.0	196.0	9.02
KFMUFM	LIC-N	281C3 Oak Creek	CO 156.71	249.1	144.0	12.71
RADD	ADD	278C0 Denver	CO 113.41	183.5	94.0	19.41
RADD	ADD	279C1 Akron	CO 201.45	111.8	177.0	24.45
KSNOFM	LIC	280A Snowmass Village	CO 224.94	222.6	200.0	24.94
KQLT	LIC	279C Casper	WY 241.37	337.0	209.0	32.37
KTCL	LIC-Z	227C Fort Collins	CO 75.66	163.5	41.0	34.66
RDEL	DEL	227C Fort Collins	CO 75.66	163.5	41.0	34.66
KJCD	LIC-N	282C1 Longmont	CO 117.05	180.5	82.0	35.05
AL281	VAC	281A Guernsey	WY 171.85	11.3	133.0	38.85
RADD	ADD	282C3 Pine Bluffs	WY 121.17	56.1	76.0	45.17
RADD	ADD	277A Wheatland	WY 148.09	6.6	75.0	73.09

Figure 3, Channel spacing study, Channel 298A
Wheatland, Wyoming

REFERENCE
42 04 28. N
104 56 51 W

CLASS = A
Current Spacings

DISPLAY DATES
DATA 10-28-04
SEARCH 10-29-04

----- Channel 298 - 107.5 MHz -----

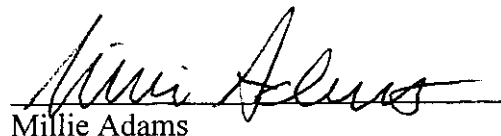
Call	Channel	Location	Dist	Azi	FCC	Margin
KKAW	LIC-N 297C3	Albin	WY 96.55	131.9	89.0	7.55
KQKS	LIC 298C	Lakewood	CO 264.77	184.0	226.0	38.77
KRVK	LIC-N 300C	Midwest	WY 134.36	304.1	95.0	39.36
KASS	LIC 295C	Casper	WY 134.46	304.1	95.0	39.46
KPAW.A	APP-Z 300C1	Fort Collins	CO 132.59	189.0	75.0	57.59
KPAW.A	APP-D 300C1	Fort Collins	CO 132.59	189.0	75.0	57.59
KRVK.A	APP-N 300C1	Midwest	WY 134.36	304.1	75.0	59.36
KRVK.A	APP-N 300C1	Midwest	WY 134.36	304.1	75.0	59.36
KRVK	RSV 300C1	Midwest	WY 134.36	304.1	75.0	59.36
KRVK	RSV 300C1	Midwest	WY 134.36	304.1	75.0	59.36

CERTIFICATE OF SERVICE

I, Millie Adams, in the law offices of Gammon & Grange, P.C., hereby certify that I have sent this 29th day of October, 2004, by first-class, postage prepaid, U.S. Mail, copies of the foregoing PETITION FOR RECONSIDERATION to the following:

Mr. John A. Karousos
Assistant Chief, Audio Division
Office of Broadcast License Policy
Federal Communications Commission
445 12th Street, S.W., Room 3-A266
Washington, D.C. 20554

Mitchell Beranek
7607 Schroder Lane
Cheyenne, WY 82009


Millie Adams